



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 57
AGENDA DATE: Thu 01/12/2006
PAGE: 1 of 4**

SUBJECT: Conduct a public hearing to consider variance requests by Mark and Renee Keeney to allow construction of an addition to a single-family residence at 3000 Vinewood Cove in the 25-year and 100-year floodplains of Shoal Creek and to limit the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain to exclude the footprint of the residence.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalione

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary M., 974-3374; George Oswald, 974-3369

PRIOR COUNCIL ACTION: December 15, 2005 - Set the public hearing.

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

Mark and Renee Keeney, the homeowners and applicants, through their architect, John Carlson, propose to enlarge their property at 3000 Vinewood Cove (re: Building Permit Application No. BP-05-10738RA). The applicants' residence is in the 100-year and 25-year floodplains of Shoal Creek. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to (1) construct a 569 sq. ft. addition to the existing 1335 sq. ft. single-family house and (2) remodel the existing residence. The proposed addition and remodeling constitute a substantial improvement as defined in the floodplain regulations. The 100-year floodplain and the 25-year floodplain of Shoal Creek completely surround the existing house while the proposed addition would lie within the eastern edge of the 25-year floodplain and be surrounded by the 100-year floodplain. During a 100-year storm event water will be more than 2.4 ft. deep on Vinewood Cove at the front of the house, thereby restricting normal access.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

SUMMARY OF FINDINGS

- 1. PROPOSED CONSTRUCTION IS WITHIN THE 25 AND 100-YEAR FLOODPLAINS OF SHOAL CREEK.**
- 2. NO SAFE ACCESS.** For the 100-year flood event, a water depth of 2.4 feet on Vinewood Cove in

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Disposition:

Published:

Adjusted version published:



Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: 57
AGENDA DATE: Thu 01/12/2006
PAGE: 2 of 4

front of house and flow velocity of 0.50 feet/second impedes access to the property. Water depth surrounding the house is 1.4 to 1.9 feet deep.

3. **SUBSTANTIAL IMPROVEMENT PROPOSED.** This necessitates elevation of the existing structure floor elevation to the regulatory flood datum (RFD is 100-year floodplain plus one foot) and construction of the addition to the RFD. Applicant does not wish to raise elevation of the existing structure to the RFD. Applicant proposes constructing the addition at an elevation below the RFD.
4. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed construction increases the opportunity for human occupancy in the floodplain.
5. **HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.
6. **RECENT FLOODS IN THE VICINITY.** The November 16 and 23, 2004 storm events resulted in light to moderate flooding in the upper Shoal Creek watershed. Street and yard flooding was reported in the 7800 block of Shoal Creek Boulevard.

VARIANCES REQUESTED FROM APPLICABLE CODE AND FINDINGS

- I. LDC Section 25-12-3 (Local Amendments to the Building Code), Appendix Chapter 58 (Flood Damage Prevention), Article 9 (Provisions for Flood Hazard Reduction), Section B (1) provides that a substantial improvement of a residential structure have the lowest floor elevated to or above the regulatory flood datum, which is one foot above the 100 year floodplain.

VARIANCE REQUESTED: The applicant requests a variance to LDC Section 25-12-3, Appendix Chapter 58, Article 9 (B) 1, to allow substantial improvement of an existing structure without regard to the elevation of both the room addition and the existing structure. (The existing structure has a finished floor elevation which is 2.0 feet below the regulatory flood datum (RFD). The applicant proposes to raise the floor of the existing garage 6 inches to match the elevation of the existing house. The applicant proposes to remodel the garage for living space. The room addition is proposed to be constructed at an elevation 0.83 ft. (10 in.) below the RFD.)

- II. LDC Section 25-12-3 (Local Amendments to the Building Code), Appendix Chapter 59 (Floodplain Regulations), Section 5903 (Nonconforming Uses) provides that a structure which was lawful before the adoption of the floodplain regulations but does not conform to the floodplain regulations may be continued, subject to specific conditions, including:

- (1) No such use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.
- (2) No substantial improvement of the structure shall be made unless the structure is changed to conform to these regulations.

VARIANCE REQUESTED: The applicant requests a variance to LDC Section 25-12-3, Appendix Chapter 59, Section 5903 to expand and enlarge an existing, nonconforming residence in the floodplain and to construct a substantial improvement to the residence without conforming to floodplain regulations.



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 57
AGENDA DATE: Thu 01/12/2006
PAGE: 3 of 4**

- III. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year floodplain.

VARIANCE REQUESTED: The applicant requests a variance from LDC Section 25-7-92(A) to allow construction of the addition in the 25-year floodplain.

- IV. LDC Section 25-7-152 (Dedication of Easements and Rights-of-way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: The applicant requests a variance to Section 25-7-152(A) to exclude the footprint of the residence from the requirement to dedicate a drainage easement.

- V. LDC Section 25-12-3, Technical Codes, Local Amendments to the Building Code, Appendix Chapter 59, Section 5912, Requirements for Other Flood-proofing Methods, (b), Building on Natural Terrain, states that: "Normal Access to the building shall be by direct connection with areas above the RFD." The RFD is one foot above the 100-year floodplain.

VARIANCE REQUESTED: The applicant's house will be surrounded by 1.4 to 1.9 feet of water during the 100-year flood event. The applicant requests a variance from the requirement of Appendix Chapter 59, Section 5912, (b) because normal access to the proposed building will not be by direct connect with areas above the RFD.

PREREQUISITES FOR GRANTING VARIANCES AND STAFF FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Local Amendments to the Building Code, Appendix Chapter 58, Article 8, Administration, D, Variance Procedures; variances shall only be issued upon an affirmative finding of the four conditions described below:

PREREQUISITE

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent*

STAFF FINDING

- 1) **NOT MET.**

In this case, there is no hardship. The owner currently has use of the residential property in compliance with the Land Development Code.



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 57
AGENDA DATE: Thu 01/12/2006
PAGE: 4 of 4**

with the regulation.

2) Showing a good and sufficient cause.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

3) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

4) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

2) NOT MET. Cause has not been shown to grant the applicant multiple variances from floodplain management regulations that other property owners have been required to comply with.

3) NOT MET. The owner currently has economic use of the property. A variance should not be issued in this case for several reasons including the applicant's inability to demonstrate a hardship condition.

4) NOT MET. The proposed development does not increase floodplain water-surface elevations. However, public safety risk is increased because Vinewood Cove at the front of the residence is inundated by 2.4 feet of water during the 100-year storm event and by 1.2 feet of water during the 25-year storm event. Public safety risk is also amplified because the proposed increase



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 57
AGENDA DATE: Thu 01/12/2006
PAGE: 5 of 4**

*in interior space offers significant opportunity for
more occupancy.*

Backup Information Packet

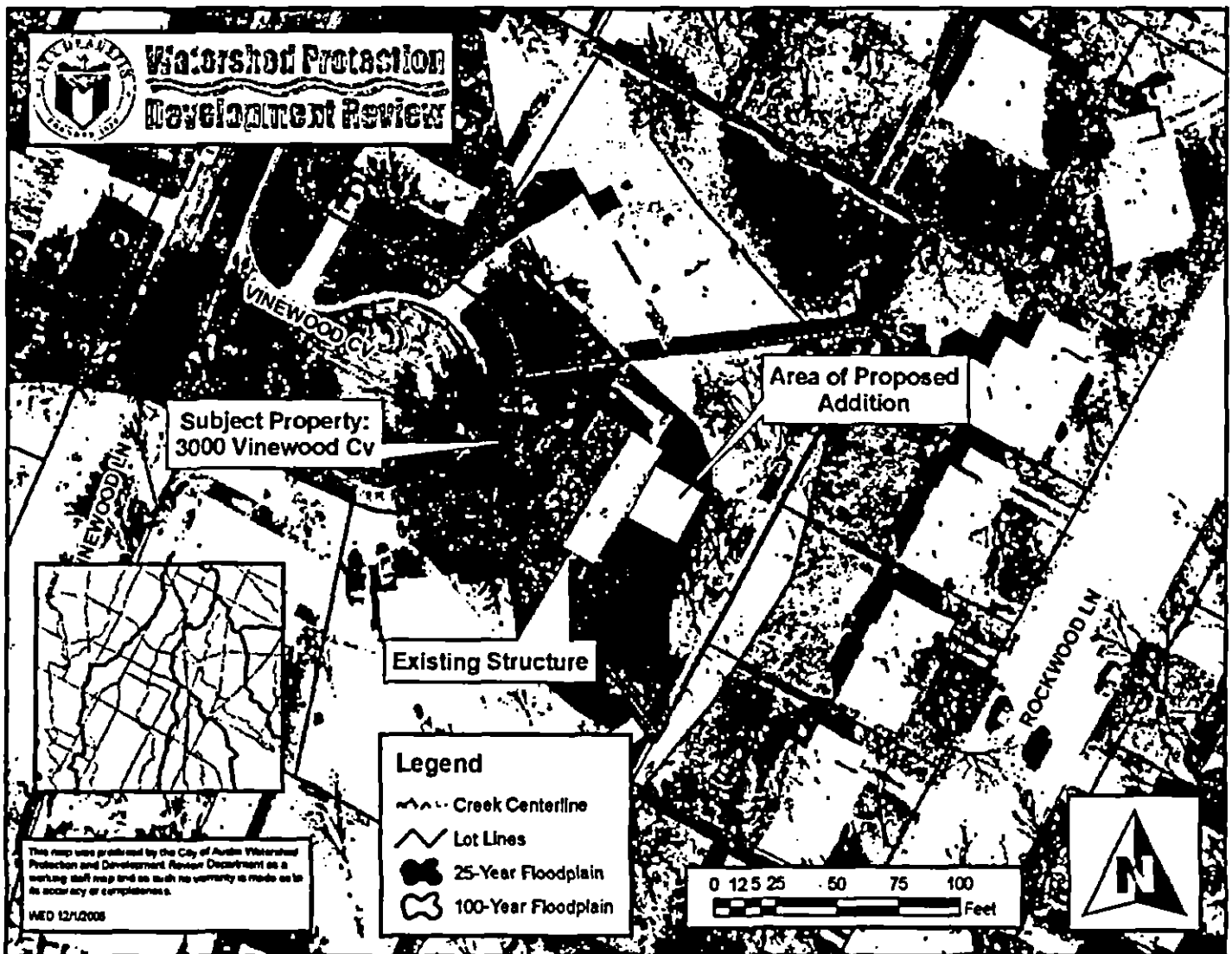
Conduct a public hearing to consider variance requests by Mark and Renee Keeney to allow construction of an addition to a single-family residence at 3000 Vinewood Cove in the 25-year and 100-year floodplains of Shoal Creek and to limit the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain to exclude the footprint of the residence.

- Site Location Map with Floodplains for 3000 Vinewood Cove
- Close Up of Site Location Map with Floodplains for 3000 Vinewood Cove

Site Location Map with Floodplains for 3000 Vinewood Cove



Close-Up of Site Location Map with Floodplains for 3000 Vinewood Cove



ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 3000 VINEWOOD COVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR REMODELING AN EXISTING HOUSE AND CONSTRUCTION OF AN ADDITION IN THE 25 AND 100-YEAR FLOODPLAIN; AND PROVIDING AN EXPIRATION FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Council has considered the factors for granting a variance from floodplain regulations prescribed by Section 25-12-3 (*Local Amendments to the Building Code*), Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*) of the City Code. Council finds that the variance granted by this ordinance is the minimum necessary to afford relief; is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 2. This ordinance applies to the remodeling and construction of a 569 square foot addition on an existing house at 3000 Vinewood Cove within the 25 and 100-year floodplain, subject to Building Permit Application No. BP-05-10738RA.

PART 3. A variance is granted from:

- (A) the requirement that normal access to a building be by direct connection with an area that is a minimum of one foot above the design flood elevation prescribed by Section 25-12-3, Building Code Section 1612.4.3 (*Means of Egress*) of the City Code; and
- (B) the requirement that the lowest floor of a residential structure be elevated one foot above the design flood elevation prescribed by Section 25-12-3, Building Code Section 1612.4.2(3) of the City Code; and
- (C) the requirement that a structure may not be expanded, changed, enlarged, or altered in any way which increases its nonconformity and that no substantial improvement be made unless the structure is changed to conform with the floodplain regulations prescribed in Section 25-12-3, Building Code

Appendix G, Section G102.3 (*Nonconforming Uses*) of the City Code; and

(D) the restriction on construction in the 25 and 100-year floodplains prescribed by Section 25-7-92(A) (*Encroachment On Floodplain Prohibited*) of the City Code; and

(E) Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) of the City Code to exclude the house and addition from the requirement to dedicate an easement to the limits of the 100-year floodplain.

PART 4. If the project for which this variance is granted does not receive all necessary building permits on or before January 23, 2007, this variance expires.

PART 5. Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

PART 6. This ordinance takes effect on _____, 2006.

PASSED AND APPROVED

_____, 2006 §
 §
 § _____
 Will Wynn
 Mayor

APPROVED: _____
 David Allan Smith
 City Attorney

ATTEST: _____
 Shirley A. Gentry
 City Clerk